

REMARKS/ARGUMENTS

Claims 1-20 were pending at the time of the mailing of the outstanding Office Action. By this amendment, claim 20 has been cancelled without prejudice or disclaimer as to the subject matter of the claim. Claim 21 has been added. Claims 1-4 have been amended.

In the Office Action of November 19, 2007, the Examiner rejected claims 1-20 under 35 U.S.C. § 112, second paragraph, as being indefinite for failure to point out and distinctly claim the subject matter of the invention. Under 35 U.S.C. § 102(e), the Examiner rejected claims 1-5, 10-15 and 17-20 as anticipated by Florio et al. (US Pat. 6, 519,493) (hereinafter "Florio). Under 35 U.S.C. § 103(a), the Examiner rejected claims 6-9 and 16 as being unpatentable over Florio.

Although the Applicants maintain that the recitation of both a stimulation rate and an intrinsic rate in claim 1 does not render claim 1 indefinite, in the interest of advancing the application, claim 1 has been amended to recite that the control unit is adapted to determine an intrinsic rate and a stimulation rate, the intrinsic rate is appropriate to the physiological demand and the stimulation rate is higher than the intrinsic rate. The Applicants maintain that this amendment provides increased clarity as to the metes and bounds of claim 1. Additionally, claim 2 has also been amended to eliminate the recitation of a narrower range or limitation within a broader range or limitation. Therefore, the Applicants maintain that claims 1-20 satisfy the requirements of 35 USC 112, second paragraph. Withdrawal of this rejection is respectfully requested.

To anticipate a claim, a reference must teach all elements of the claim (MPEP § 2131). The Applicants do not observe any teaching or suggestion of the heart stimulator disclosed by Florio operating in a VVI-mode, as recited by claim 1, when delivering stimulation pulses with an increased (overdrive) pacing rate. Therefore, Florio can not be said to teach an implantable cardiac stimulator as recited in claims 1-5, 10-15 and 17-19. Withdrawal of the rejection under 35 U.S.C. § 102(e) is respectfully requested.

The Examiner maintains that claims 6-9 and 16 are obvious over Florio. As mentioned above, no teaching or suggestion of operation of a cardiac stimulator in VVI mode, is observed in Florio. Therefore, the Applicants maintain that claims 6-9 and 16 also patentably

distinguish over Florio. Withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

Claim 21, which provides additional distinctions over Florio, has been added. Claim 21 recites that the cardiac stimulator is adapted to provide a stimulation rate continually. Support for this new claim may be found in paragraphs 0006-0009. The Applicants maintain that Florio does not teach or suggest permanent overstimulation as provided in claim 21. Accordingly, the issuance of a Notice of Allowance is earnestly solicited.

The outstanding Office Action was electronically transmitted on 19 November 2007. The Examiner set a shortened statutory period for reply of 3 months from the mailing date. Therefore, the Applicants hereby make a petition for a one month extension of time for filing this response. The Applicants also hereby make a conditional petition for any additional extension of time for response in the event that such a petition is required. The Commissioner is authorized to charge any fee required with the filing of this paper or to credit any overpayment to Deposit Account 15-0450.

Respectfully submitted,

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